

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): James F. Zucherman, et al.

Appl. No.: 10/684,847

Confirm. No.: 3522

Filed: October 14, 2003

Title: INTERSPINOUS PROCESS APPARATUS AND
METHOD WITH A SELECTABLY EXPANDABLE
SPACER

PATENT APPLICATION

Art Unit: 3733

Examiner: Pedro Philogene

Customer No. 23910

**TRANSMITTAL LETTER RE INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. §1.56**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

Enclosed with this statement are the following:

- Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- As allowed under 37 C.F.R. § 1.98(a)(2)(ii), no copies of the U.S. patents and U.S. patent application publications are enclosed, unless required by the office.
- As allowed under 37 CFR §1.98(d), copies of cited documents noted with an asterisk are not enclosed because they were previously submitted in U.S. Patent Application No. ____ / ____ , which is relied on for an earlier effective filing date under 35 USC §120, and which included an Information Disclosure Statement that complies with 37 CFR §1.98(a) through (c).
- A copy of an International Search Report dated November 22, 2006, for Application No. PCT/US06/10521.
- A copy of an International Preliminary Examination Report dated _____ for Application No. _____ .

If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(I). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

This statement should be considered because:

— **37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

✓ **37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.
-- AND (*check at least one of the following*) --

— (a) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).
-- OR --

✓ (b) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

- **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:
 - (1) It is being filed on or before payment of the Issue Fee;
-- AND --
 - (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);
-- AND --
 - (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).
- **PTA Statement under 37 C.F.R. §1.704(d).** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.
- **37 C.F.R. §1.97(e)(1).** THE UNDERSIGNED ATTORNEY HEREBY STATES THAT each item of information contained in this *Information Disclosure Statement* was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this *Information Disclosure Statement*; or
- **37 C.F.R. §1.97(e)(2).** THE UNDERSIGNED ATTORNEY HEREBY STATES THAT no item of information contained in this *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this *Information Disclosure Statement* was known to any individual designated in §1.56(c) more than three months prior to the filing of this statement.
- ✓ **Fee Authorization.** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325.

Respectfully submitted,

FLIESLER MEYER LLP

Date: January 31, 2007

By: /Michael L. Robbins/
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Form PTO-1449
(Substitute)

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Attorney Docket Number
SFMT-01056USD

Application/Patent Number
10/684,847

Information Disclosure Statement
BY APPLICANT
(Use several sheets if necessary)

Applicant/Patent Owner: James F. Zucherman, et al.

Filing/Issue Date: October 14, 2003

Group Art Unit: 3733

U.S. PATENTS

Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
	1.	6,045,552	04/04/2000	Zucherman	606	061	03/18/98
	2.	6,074,390	06/13/2000	Zucherman	606	061	02/05/98
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	4.	6,149,652	11/21/2000	Zucherman	606	061	07/27/99
	5.	6,152,926	11/28/2000	Zucherman	606	061	07/27/99
	6.	6,156,038	12/05/2000	Zucherman	606	061	05/06/99
	7.	6,183,471 B1	02/06/2001	Zucherman	606	061	11/25/98
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	11.	6,280,444 B1	08/02/2001	Zucherman	606	061	02/18/2000
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U.S. Patent Application No. 10/684,847

Attorney Docket No.: SFMT-01056USD

MRobbins/sfmt/1056USD/5th_Suppl_IDS

Examiner Signature: _____

- 4 -

Date Considered: _____

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	20.	6,451,019 B1	09/17/2002	Zucherman	606	061	05/26/2000
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	22.	6,478,796 B1	11/12/2002	Zucherman	606	061	03/15/2001
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	26.	6,582,433 B1	06/24/2003	Yun	606	061	04/09/2001
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	29.	6,652,527 B2	11/25/2003	Zucherman	606	061	10/18/2001
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	32.	6,699,246 B2	03/02/2004	Zucherman	606	061	04/26/2001
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	39.	6,926,728 B2	08/09/2005	Zucherman et al.	606	190	10/16/2001

U.S. PATENT PUBLICATIONS

Examiner Initial		Patent Application Publication Number	Publication Date	Applicant

PENDING U.S. PATENT APPLICATIONS

Examiner Initial		Application Number	Filing Date	First Named Inventor	Petition to Expunge? Yes No

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Group Art Unit: 3733

FOREIGN PATENT DOCUMENTS

Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Trans-lation Yes No
	40.	WO 02/051326	07/2002	International			

OTHER DOCUMENTS (Include author (if any), title, publisher and place of publication, date and pertinent pages)

	41.	International Search Report for PCT/US06/10521 mailed on November 22, 2006, 7 pages.
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Examiner _____ Date Considered _____

*EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

*1 = Copy not submitted because it was submitted in prior application SN ____ /_____, filed _____, 20____, relied on under 35 USC §120.

**2 = Copy not submitted because it was submitted in prior application SN ____ /_____, filed _____, 20____, relied on under 35 USC §120.